



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,371	06/22/2000	John D. Nelson	101992-200	8796
27267	7590	07/05/2005	EXAMINER	
WIGGIN AND DANA LLP ATTENTION: PATENT DOCKETING ONE CENTURY TOWER, P.O. BOX 1832 NEW HAVEN, CT 06508-1832			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/599,371

Applicant(s)

NELSON ET AL

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,8-11,33,34,43-46,48,50,52,54 and 56-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,8-11,33,34,43-46,48,50,52,54,56-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1,8-11,33,34,43-46,48,50,52,54,56-58 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1615

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 2 was cancelled in the 1/24/05 prior amendment, otherwise claims present are as applicant shows.

The claim indicators are incorrect, for claim 2; it should be identified as cancelled.

Claims 8, 9, 54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The rejection of record is maintained; the complex of claim 1 is of pyrrhione, not Zn, Ln, or Ag. Concentrate is at the penultimate line of 54. Complex is at line 2, and applied ^{ONLY} to pyrrhione. Applicant's explanations result in removal of 112 first paragraph rejections.

Claims 45, 56 stands rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Examiner does not find supported of the negative limitation in the specification, page 24, top specifically cites strong (otherwise undefined in a mended claim language, or specification) chelating agents of zinc copper. Silver as within the scope of the invention.

Claims 1, 11, 33, 34, 43, 45, 46, 48, 50, 52, 56-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaufman et al 6017502.

Art Unit: 1615

Pyrrithione complexes with zinc salts, the chloride (col. 4, line 38-55) are used, (col. 4, line 60). 3-52% pyrrithione is used (col. 4, lines 35-37). Alkanolamines the zinc salt is at 0.1-10% (last paragraph) Dilutions are in examples. See example 1 a complex of zinc sulfate, monohydrate, with sodium pyrrithione is shown, within the ratios. The future, intended use, is of no patentable weight. We do not find requirement for either "strong" chelating agents" or Tiazolinone.

Claims 1, 8, 11, 44, 48, 54, and 58 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dixon et al EP.077630.

The rejection of record is maintained Dilution and concentration are obvious to the artisan to perform as required for the purpose at hand – storage, transportation, or use.

Claims 1, 8-11, 33, 34, 43, 46, 48, 50, 52, 54, 57, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kappock et al 5518774.

The rejection of record is maintained. Dilution, Concentration being obvious to the artisan. See claim 1 of Kappock, for example. No Thiazolinane or strong chelator is required.

Art Unit: 1615

Claims 33, 34, 43, 46, 48, 50, 52, 54, 57, 58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wiese et al 5227156.

The rejection of record is maintained.

Claims 1, 8-11, 45-46 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nagata et al JP 134227.

The rejection of record is maintained.

Applicant's arguments filed on 11/08/04 and 3/9/05 have been fully considered but they are not persuasive. Applicant's arguments are to patentability of concentrates over dilutions; we see no distinction. One in the art needs only the required components, effective for the required function, in this case antimicrobial efficacy, to be able to ascertain the required dilution, or inversely, starting components. The prior art clearly shows the level of expertise of the artisan as able to attain appropriate concentration by Multiplying, dividing, or simple testing. The rejections are maintained after consideration of applicant's any aments, except where persuasive. The Korean document is considered as cumulative.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

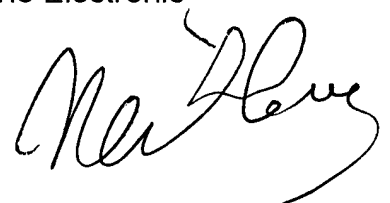
Art Unit: 1615

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL S. LEVY
PRIMARY EXAMINER